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WELSH STATUTORY INSTRUMENTS

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**2001 No. 2678**

**The Change of Category of Maintained  
Schools (Wales) Regulations 2001**

**Citation, commencement and application**

1.—(1) These Regulations are called the Change of Category of Maintained Schools (Wales) Regulations 2001 and shall come into force on 1st September 2001.

(2) They apply to Wales.

**Revocation and savings**

2.—(1) Subject to paragraph (2) the Education (Change of Category of Maintained Schools) (Wales) Regulations 1999(1) are revoked.

(2) Schedule 6 to the Act as applied, with modifications, by those Regulations shall continue to apply in relation to any proposals published, in accordance with that Schedule as so applied with modifications, before the date of coming into force of these Regulations.

**Interpretation**

3.—(1) In these Regulations, unless the context otherwise requires:

“the Act” (“*y Ddeddf*”) means the School Standards and Framework Act 1998(2);

“foundation body” (“*corff sefydledig*”) has the meaning given to it by section 21(4)(a) of the Act;

“the governing body” (“*y corff llywodraethu*”) means the governing body of the school in respect of which a change of category is proposed or, as the case may be, takes place;

“group” (“*grŵp*”) has the meaning given to it by section 21(4)(b) of the Act;

“the implementation date” (“*y dyddiad gweithredu*”) means the date specified in the proposals as the date on which it is proposed that the change of category should take place;

“the implementation period” (“*y cyfnod gweithredu*”) means the period commencing on the date proposals are approved under paragraph 8 of modified Schedule 6 to the Act, and ending on the implementation date;

“modified Schedule 6 to the Act” (“*Atodlen 6 addasedig i'r Ddeddf*”) means that Schedule as it has effect with modifications by virtue of regulation 7 of and Part I of Schedule 1 to these Regulations;

“modified Schedule 12 to the Act” (“*Atodlen 12 addasedig i'r Ddeddf*”) means that Schedule as it has effect with modifications by virtue of regulation 12 of and Part VI of Schedule 3 to these Regulations;

“the National Assembly” (“*y Cynulliad Cenedlaethol*”) means the National Assembly for Wales;

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(1) S.I.1999/2633 (W. 7).

(2) 1998 c. 31.

“the proposals” (“*y cynigion*”) means the proposals published under paragraph 2 or 3 of Schedule 8 to the Act with any modifications made by the National Assembly under paragraph 8 or 10 of modified Schedule 6 to the Act;

“publicly funded land” (“*tir a ariennir yn gyhoeddus*”) means land which was acquired—

- (a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996<sup>(3)</sup>;
- (b) wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III<sup>(4)</sup> of that Act);
- (c) wholly by means of any grant paid under regulation 3 of the Education (Schedule 32 to the School Standards and Framework Act 1998) (Wales) Regulations 1999<sup>(5)</sup>;
- (d) wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature;
- (e) under a transfer under Schedule 4; or
- (f) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (e);

“transfer agreement” (“*cytundeb trosglwyddo*”) means an agreement—

- (a) made between the local education authority and the trustees or the foundation body or the governing body of the school (as the case may be), and
- (b) providing for land to be transferred to, and vest in, the local education authority on the implementation date (whether or not in consideration of payment by the authority).

(2) Unless the context otherwise requires, a reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation of, or Schedule to, these Regulations so numbered and a reference to a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which the reference appears.

### **Breach of prescribed time limits**

4. A failure by a local education authority or a governing body to discharge any duty within a time limit prescribed by these Regulations shall not relieve the authority or the governing body of that duty.

### **Restrictions on changing category of school**

5.—(1) A school may not change category to become a voluntary aided school unless the governing body of the school satisfy the National Assembly that the governing body (as the governing body of a voluntary aided school) will be able to carry out their obligations under Schedule 3 to the Act for a period of at least five years following the implementation date.

(2) A foundation, voluntary aided or voluntary controlled school may not become a community school and a foundation special school may not become a community special school unless any transfer agreement and transfer of rights and liabilities agreement required by Schedule 4 has been entered into.

(3) A school’s change of category under these Regulations shall not be taken as authorising a school to establish, join or leave a foundation body.

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(3) 1996 c. 56. Section 201(1)(a) is repealed by Schedule 31 to the Act.

(4) Chapter VI of Part III is repealed by Schedule 31 to the Act.

(5) S.I. 1999/1469.

## **Proposals**

6.—(1) Regulations 7 to 18 shall apply in relation to proposals under paragraph 2 or (as the case may be) 3 of Schedule 8 to the Act of the kind mentioned in paragraph (2).

(2) Those proposals are proposals—

- (a) by a local education authority that a community school should change category to become a foundation school or that a community special school should change category to become a foundation special school;
- (b) by a governing body that a community, foundation, voluntary aided or voluntary controlled school should change category to become a school within another of those categories (including, in the case of a voluntary aided school, proposals which the governing body are required to publish by virtue of paragraph 3 of Schedule 8 to the Act);
- (c) by a governing body that a community special school should change category to become a foundation special school or vice versa.

## **Application of section 28 of and Schedule 6 to the Act**

7.—(1) Part I of Schedule 1 has effect for applying with modifications provisions of section 28 of, and Part II of Schedule 6 to, the Act in relation to proposals such as are mentioned in regulation 6.

(2) The provisions of section 28 of, and Part II of Schedule 6 to, the Act so applied are set out in Part II of Schedule 1 as so modified; and with references to the National Assembly (in whom the functions of the Secretary of State are now vested) substituted for references to the Secretary of State.

## **Implementation of proposals**

8. On the implementation date the school shall change category in accordance with the proposals.

## **Transfer of staff**

9. Schedule 2 has effect in relation to the transfer of staff.

## **Instrument of government**

10.—(1) The governing body and the local education authority shall secure that by the end of the implementation period a new instrument of government is made for the school in accordance with modified Schedule 12 to the Act.

(2) The new instrument of government shall take effect from the date of making for the purpose of reconstituting the governing body but shall not affect the constitution of the governing body conducting the school pending the implementation date.

(3) For all other purposes, the new instrument of government shall take effect from the implementation date.

11.—(1) The new instrument of government for a school changing its category shall be made in the form set out in the relevant Part of Schedule 3.

(2) It shall be a sufficient compliance with paragraph (1) if the instrument of government is in a form substantially to the like effect to the form set out in the relevant Part of Schedule 3.

12. Schedule 12 to the Act in its application to new instruments of government as mentioned in regulation 11 shall have effect with the substitution for sub-paragraphs (2) to (6) of paragraph 3 of that Schedule of the sub-paragraphs set out in Part VI of Schedule 3.

### **Reconstitution of governing body**

13.—(1) The current governing body and the local education authority shall secure that, as soon as reasonably practicable after the commencement of the implementation period (and in any event within a period of three months beginning on the implementation date), the governing body are reconstituted in accordance with the new instrument of government and modified Schedule 12 to the Act.

(2) The current governing body shall exercise their functions under the Act and these Regulations in a manner calculated to enable the local education authority to fulfil their duties under paragraph (1).

### **Current governors continuing in office**

14.—(1) Paragraph (2) applies to any member of a current governing body in respect of which a new instrument of government has been made under these Regulations.

(2) Subject to regulation 15, a governor to whom this paragraph applies shall continue from the implementation date (or the making of the new instrument of government if later) as a governor of the corresponding category required by the new instrument of government (where a corresponding category exists).

(3) A member of a current governing body who continues as a governor under paragraph (2) shall hold office for the remainder of the term for which he or she was originally appointed or elected.

(4) The proceedings of the governing body shall not be invalidated by the school having more governors of a particular category than are provided for by the new instrument of government, pending the removal of surplus governors under regulation 15.

### **Surplus governors**

15.—(1) Where—

- (a) on or after the implementation date a school has more governors of a particular category than are required as governors of that category by the new instrument of government, and
- (b) the excess is not eliminated by resignations,

such number of that category as is required to eliminate the excess shall cease to hold office in accordance with paragraphs (2) and (3).

(2) The governors who are to cease to hold office shall be determined on the basis of seniority, the governor whose current period of continuous service (whether as a governor of one or more than one category) is the shortest being the first to cease to hold office.

(3) Where it is necessary for the purposes of paragraph (2) to select one or more governors from a group of equal seniority, it shall be done by drawing lots.

(4) For the purposes of this regulation, additional co-opted governors nominated by a particular category of person shall be treated as if they constituted a separate category of governor.

(5) Any procedure set out in the new instrument of government for the removal of excess foundation governors shall not apply to the reconstitution of the governing body under these Regulations.

### **Land**

16. Schedule 4 has effect in relation to land.

### **Transitional provisions**

**17.** Where a community or voluntary controlled school changes category to become a voluntary aided, or foundation school anything done before the implementation date by the local education authority as admission authority under any provision in Chapter 1 of Part III of the Act (admission arrangements) shall, from the implementation date, have effect as if done by the governing body.

**18.** Where a foundation or voluntary aided school changes category to become a community or voluntary controlled school anything done before the implementation date by the governing body as admission authority under any provision in Chapter 1 of Part III of the Act (admission arrangements) shall, from the implementation date, have effect as if done by the local education authority.

**19.** Any period of consultation which takes place before the coming into force of these Regulations shall be counted for the purpose of determining whether the duty under section 28(5) of the Act, as it has effect with modifications by virtue of regulation 7 of and Part I of Schedule 1 to these Regulations, has been complied with.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(6).

17th July 2001

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly